

EVIDENCE

ANDRES GATMAITAN *

NILO TUASON **

A—Relevancy of Evidence—Proof of Motive

Evidence is admissible when it is relevant to the issue and is not excluded by Rule 123 of the Rules of Court.¹ It must correspond with the substance of the issue and therefore, collateral matters shall not be allowed, except when they tend in any reasonable degree to establish the probability or improbability of a fact in issue.²

Motive is relevant in case of doubt as to the author of the crime,³ but proof of motive is not indispensable.⁴ The case of *People v. Necesito*⁵ reiterates the rule that when there is credible direct evidence as to the identity of the assailant, proof of motive may be dispensed with.

B. Judicial Notice

Judicial notice may be defined as the cognizance of certain facts which a judge under rules of legal procedure or otherwise may properly take or act upon without proof because they are already known to him or because of that knowledge which a judge has or is assumed to have by virtue of his office.⁶

In *People v. Lim Ho*,⁷ the court took judicial cognizance of the fact that an exchange crisis existed in the Philippines at the time of the issuance of Circulars 20 and 21 of the Central Bank of in 1949 and 1950 and that such exchange crisis has remained in existence up to the present.

As a rule, courts do not take judicial notice of foreign laws since such laws are outside the limits of the court's jurisdiction. However, where the foreign law is introduced in evidence and admitted by the court a quo as an exhibit during the hearing of the case, and the provisions of the foreign law are not disputed, the appellate court may take into account contents of said foreign law *without proof of such law having been offered* at the hearings in the lower court—in the form and manner provided for by sec. 41 of Rule 123.⁸

C. Admissions

The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.⁹ In *People v. Demiar*,¹⁰ the defendant Climaco Demiar in a fit of anger grabbed his mother's neck and choked her for some-time. After the choking, the mother could no longer swallow any food nor drink water, due to her swollen neck. Three days later, she died. Thereafter, defendant wrote a letter to his brother-in-law seeking forgiveness from his

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** Member, Student Editorial Board, PHILIPPINE LAW JOURNAL, 1960-61.

¹ Rules of Court, sec. 3.

² Rules of Court, Rule 123, sec. 4.

³ *People v. Maria*, 44 O.G., 961; *U.S. v. Mann*, 4 Phil. 561; *U.S. v. Carlos*, 15 Phil. 47, 51.

⁴ *People v. Sahi*, 46 O.G. 627; *People v. Ragsac*, 6 Phil. 146; *People v. Ramponit* 62 Phil. 2854; *People v. Bugco*, G.R. No. L-539, Jan. 27, 1948.

⁵ G.R. No. L-13467, September 30, 1960.

⁶ 20 Am. Jur., Sec. 16, p. 47.

⁷ G.R. Nos. L-12091-92, Jan. 28, 1960.

⁸ *Testate Estate of Bohanan v. Bohanan*. G.R. No. L-12105, June 30, 1960.

⁹ Rules of Court, Rule 123, sec. 7.

¹⁰ G.R. No. L-15130, May 31, 1960.

sisters and asking them to testify that their mother died a natural death. He was prosecuted for parricide.

Held: The defendant's statements contained in the letter may be taken as admissions and not as disclaimers of guilt. Self-serving statements made extra-judicially cannot be admitted as evidence in favor of the person making them, although the incriminating evidence is evidence against him.

*People v. Berganio*¹¹ re-states the rule that unexplained flight from the scene of the crime evinces positive consciousness of guilt.

D. Admission by Conspirator

The act or declaration of a conspirator, relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration.¹²

In the case of *People v. Dagundong*,¹³ Adriano Dagundong, Melchor Lao, Federico Bulaon, Ricardo Serrano and Joseph Ebrada were charged with frustrated robbery in band with homicide. Ebrada was discharged from the information in order that he could be utilized as a state witness. He testified in court that 2 days prior to the commission of the crime, he, Lao and appellants agreed on committing the robbery and that on the very day thereof, they carried into execution their criminal plot.

Held: The confession is admissible. The evidence adduced in court by the co-conspirator as witness is not an admission by a co-conspirator but direct testimony to the facts to which he testifies.

E. Confession

The declaration of an accused expressly acknowledging the truth of his guilt as to the offense charged, may be given in evidence against him.¹⁴ However, an extrajudicial confession made by an accused shall not be a sufficient ground for conviction, unless corroborated by evidence of corpus delicti.¹⁵

While a confession is evidence of guilt of high quality, conviction of defendants cannot be predicated merely on their supposed admissions or confessions made before some of the witnesses for the prosecution.¹⁶ In the case of *People v. Mitra*,¹⁷ the court ruled that where defendant's confession is replete with details on how the crime was planned and executed, it could not have been the product of mere imagination—more so when it is corroborated in all its material details by the extrajudicial declarations of his co-accused.

In *People v. Aquidado*¹⁸ — appellants, after having been apprehended, gave statements admitting their guilt, signed under oath before the Clerk of Court of the Iloilo Court of First Instance. During the trial, defendant claimed that his confession was obtained through force and intimidation. His claim was not supported by the records of the case.

Held: The claim is gratuitous. Defendant did not even take the witness stand even if only to show that such confession was involuntary. On the other hand, the Clerk of Court before whom said confession was signed under oath testified that it was a voluntary confession.

¹¹ G.R. No. L-10121, December 29, 1960.

¹² Rules of Court, Rule 123, sec. 12.

¹³ G.R. No. L-10398, June 30, 1960.

¹⁴ Rules of Court, Rule 123, sec. 14.

¹⁵ Rules of Court, Rule 123, sec. 96.

¹⁶ *People v. Minuray*, G.R. No. L-14794, March 30, 1960.

¹⁷ G.R. No. L-13030, April 29, 1960.

¹⁸ G.R. No. L-12916, May 25, 1960.

Where the justice of the peace before whom the confessions were allegedly executed testified that defendants admitted before him the truth of their written statements, that the contents thereof were translated to them in their own dialect and that they positively affirmed before him that they signed the same voluntarily, the testimony was held sufficient to establish the voluntariness and the regular execution of the confession.¹⁹

*People v. Pagulayan*²⁰ is authority for the rule that subsequent reenactment made by a person executing a confession, of the various stages of the crime supplements the material facts stated in the confession and such can only be furnished by no other than the one who had first hand information thereof.

The rule that admissibility of a confession secured by the use of force depends on the truth or falsity of facts or admissions contained therein was reiterated in *People v. Frias*.²¹

F. Moral Character of Parties in Criminal Cases

The good moral character of an accused having reference to the moral trait involved in the offense charged maybe proved by him. Unless in rebuttal, the prosecution cannot prove the bad moral character of the accused. The good or bad moral character of the offended person may be proved if it may establish in any reasonable degree the probability or improbability of the offense charged.²² Thus, proof of the character of the deceased is allowed in homicide cases.²³

In the case of *People v. Baloyo*,²⁴ the court held:

"Appellant's story of self-defense must be rejected. It does not seem likely that the deceased who was shown to be a man of kindly disposition would take an aggressive attitude as that pictured of him. As observed by the trial court, the deceased adopted a policy of attraction in his dealings with the appellant even after he was dismissed from the company, allowing him to live in the sawmill compound despite his order of removal and giving him a site to hold cockfights. On the other hand, appellant was a trouble-maker, stubborn and a philosopher. He also made a threat of taking someone's life if the gambling he maintained were to be stopped. Rebellious and belligerent by nature and faced with the loss of the means from which he had been eking out a living for himself and his family, appellant had more reason to take the aggressive attitude."

G. Expert Evidence

The opinion of a witness, regarding a question of science, art or trade, when he is skilled therein, may be received in evidence.²⁵ An expert is one possessing in regard to a particular subject or department of human activity, knowledge not usually acquired by other persons.²⁶

In the case of *People v. Demar*²⁷ (previously cited), defendant claimed that no expert witness was presented to testify on the cause of his mother's death and that possibly the deceased had died of another cause and not due to the act of strangulation by the defendant. The court found such contention untenable in the face of direct and positive fully-corroborated testimony that before the choking incident, the deceased was enjoying normal health and

¹⁹ *People v. Bolivar*, G.R. No. L-12450, December 29, 1960.

²⁰ G.R. No. L-13292, December 29, 1960.

²¹ G.R. No. L-13767, July 30, 1960.

²² Rules of Court, Rule 123, sec. 15.

²³ *People v. Soliman*, 53 O.G. 8083.

²⁴ G.R. No. L-11216, January 30, 1960.

²⁵ Rules of Court, Rule 123, sec. 18.

²⁶ *U.S. v. Gil*, 13 Phil. 530.

²⁷ G.R. No. L-15130, May 30, 1960.

did the daily household chores; that she died 3 days later. Expert evidence was here considered not indispensable.

In *People v. Prado*,²⁸ a prosecution for robbery with rape, defendant questioned the lack of experience of the physician who examined the private parts of the offended party. The court found no merit in the objection. The findings about the inflamed condition of the private parts of the victim required no past experience because the inflammation was visible to the naked eye and nothing could have produced it but the rape perpetrated by defendants on her. The inflammation could not have been produced in the ordinary course of cohabitation with the husband who would not have used force as the assailants did.

H. Incompetent Witnesses

The following persons cannot be witnesses:

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(b) Children who appear to the court to be of such tender age and inferior capacity as to be incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly.

The testimony of two primary school boys, 9 and 12 years old respectively, who appeared upon examination to understand the nature of their oath, of sufficient intelligence and discernment—was given full faith and credit by the court in the case of *People v. Guzman*.²⁹

I. Dying Declarations

The declaration of a dying person, made under consciousness of an impending death may be received in a criminal case wherein his death is the subject of inquiry as evidence of the cause and surrounding circumstances of such death.³⁰

In the case of *People v. Masic*,³¹ one Jose Isio was assaulted by three accused, inflicting upon him 8 stab wounds which caused his death that same evening. That the three were the aggressors appeared from the ante-mortem statement given by the victim before the town vice-mayor who wrote down said statement wherein Isio indicated that Abelardo Masic, Arturo Duma and another person as his assailants. The "other person" had reference to Juan Masic because he was the only other person who helped and participated in assaulting the deceased. In the face of such dying declaration, corroborated by the testimony of two witnesses, the court rejected defendants claim of self-defense.

To the same effect is the ruling of the court in *People v. Mariñas*.³² In this case, one Victoriano Corpus was stabbed from behind by defendant with a bolo causing his death several hours later. Deceased was able to make an ante-mortem declaration before the Chief of Police of Bangued, identifying accused as his assailant. Such declaration, taken together with the testimony of other witnesses sufficed for conviction.

J. Declaration Against Interest.

The declaration made by a person deceased, or outside of the Philippines, or unable to testify, against his pecuniary or proprietary interest, with

²⁸ G.R. No. L-12403, June 30, 1960.

²⁹ G.R. No. L-13340, April 30, 1960.

³⁰ Rules of Court, Rule 123, sec. 28.

³¹ G.R. No. L-12050, May 26, 1960.

³² G.R. No. L-10038, May 30, 1960.

³³ Rules of Court, Rule 123, sec. 29.

sufficient knowledge of the matter by him stated may be received in evidence against his successors in interest and against third persons.³³

Is a declaration against penal interest made by a declarant after having pleaded guilty to the crime of murder admissible in evidence? The court answered this question in the negative in the case of *People v. Boto Balonto*.³⁴ Declarant had nothing to lose by admitting all the blame, while by doing so, he could save his stepfather as well as his brother. This is not covered by section 29 of Rule 123.

K. Part of the Res Gestae

Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof may be given in evidence as a part of the res gestae. So also, statement accompanying an equivocal act material to the issue and giving it a legal significance, may be received as a part of the res gestae.³⁵

In *People v. Noranza*,³⁶ the confession by the accused to the widow of the victim that he had killed her husband whose dead body lay at the creek east of the house, made right after the killing, was considered as falling under the res gestae rule.

L. Proof of Foreign Law

*Testate Estate of Bonahan v. Bonahan*³⁷ points out that the law of the state of Nevada, being a foreign law, can only be proved in our courts in the manner and form provided for in section 41 of Rule 123 of the Rules of Court.

M. Attestation of Copy

Whenever a copy of a writing is attested for the purpose of evidence the attestation must state in substance that the copy is a correct copy of the original or a specific part thereof as the case may be. The attestation must be under the official seal of the attesting officer if there be any, or if he be the clerk of a court having a seal under the seal of such court.³⁸

In the case of *Mendoza v. de Castro*³⁹ the court denied the petition for reconstitution of a supposed decision of the Court of First Instance of Manila since the existence of the supposed case was questionable, the simple copy of the decision presented by the plaintiff not bearing the seal of the court which issued it nor the signature of the Clerk of Court who supposed gave it.

N. Best Evidence Rule

There can be no evidence of a writing other than the writing itself, the contents of which is the subject of inquiry except in a few cases recognized by the Rules of Court.⁴⁰

The case of *Emilio Santos v. Commission on Elections*⁴¹, involved the proclamation of the winning candidate for mayor of Hagonoy, Bulacan by the municipal board of canvassers originally constituted by the mayor of said town and 9 members after canvass of the votes cast for municipal offices in the election of November, 1959. Said the court in this case:

³³ G.R. No. L-11325, November 29, 1960.

³⁴ Rules of Court, Rule 133, sec. 33.

³⁵ G.R. No. L-13288, June 30, 1960.

³⁶ G.R. No. L-12105, January 30, 1960.

³⁷ Rules of Court, Rule 123, sec. 42.

³⁸ G.R. No. L-12965, April 29, 1960.

⁴⁰ Rules of Court, Rule 123, sec. 46.

“Upon the other hand, this court is of the opinion that it must declare likewise null and void, the second proclamation made by the reconstituted board of canvassers composed of 5 members of the original board and the 5 substitutes appointed by the Commission on Elections. The reason is that their canvas was not made on the basis of the original returns for precinct No. 7 received by the municipal treasurer as prescribed by law but upon the *photostatic copy* of the duplicate received by the Commission on Elections. It would be a dangerous precedent in our opinion to authorize the board of canvassers to use any copy of the return other than the one indicated by law without first establishing that the latter is not available.”

O. Disputable Presumptions

In *Reyes v. Reyes and the Workmens Compensation Commission*,⁴² the Workmen's Compensation Commission denied a claim for compensation of petitioners for the death of Victoriano Santiago, driver of a jeepney operated by the respondent. The deceased was the driver of an autocalesa belonging to respondent and was last seen operating said autocalesa at 9:00 in the evening of September 26, 1955. In the morning of September 27, 1955 his dead body was found in Tayabas, Quezon a victim of murder by persons who were at large and whose identities were not known. From these facts, the WCC concluded that deceased had disregarded the specific instructions of his employer not to operate outside the limits of the City of Manila as well as the orders of the PSC and therefore death did not arise out of or by reason of his employment.

Held: The conclusion drawn by the WCC violates the presumption “that the ordinary course of business has been followed”—laid down by sec. 69 (g) of Rule 123 of the Rules of Court. The presumption is that he performed his duties legally and in accordance with the rules and regulations because that was his regular obligation. It was incumbent upon the respondent to prove that the deceased voluntarily went out of his route and drove his jeepney towards Quezon province.

The case of *Samanilla v. Cajucom*⁴³ holds that there is a legal presumption of sufficient cause or consideration supporting a contract of mortgage even if such cause is not stated therein.

The case of *Testate Estate of Jose Avellana v. Jose Javellana*⁴⁴ holds that a will executed in the Philippines cannot be presumed to have been executed in conformity with the laws of the Philippines. Such conformity must be proved in the proceedings for the probate of the will.

In *People v. Lim Ho*,⁴⁵ the court re-affirmed that circular issued by the Central Bank must be presumed to have been issued in accordance with laws, the Constitution, and pertinent international agreements binding on our government.

P. Burden of Proof in Criminal Cases

In criminal cases, the burden of proof as to the offense charged lies on the prosecution. A negative fact alleged by the prosecution need not be proved unless it is an essential ingredient of the offense charged.⁴⁶

*People v. Fraga*⁴⁷ — asserts that the rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases.

⁴¹ G.R. No. L-16413, January 26, 1960.

⁴² G.R. No. L-13542, February 29, 1960.

⁴³ G.R. No. L-13683, March 28, 1960; Rules of Court, Rule 123, sec. 69(r).

⁴⁴ G.R. No. L-13781, January 28, 1960.

⁴⁵ G.R. Nos. L-12091-92, January 28, 1960.

⁴⁶ Rules of Court, Rule 123, sec. 71.

⁴⁷ G.R. No. L-12006, Aug. 31, 1960.

In *People v. Mansaka*,⁴⁸ appellant denied all the imputations made against him by the witnesses for the prosecution but introduced no evidence to support his denials. The court held that such denials could not overcome the direct evidence submitted by the prosecution.

The case brings to mind the significant distinction between burden of proof and burden of evidence. Burden of proof means the general duty of a party to establish the issue or the truth of his claim by the amount of evidence required by law.⁴⁹ *Ei incumbit probatio qui dicit, non qui negat*. He who asserts not he who denies, must prove. On the other hand, burden of evidence means the duty of a party to introduce and continue giving evidence at any stage of the trial in order to establish a prima facie case, or the like duty of the adverse party to meet and overthrow the prima facie case thus established.⁵⁰ The former is static while the latter may shift from one party to the other in the course of trial.

*People v. Pancho*⁵¹ reiterates the rule that self-defense must be proved by clear and convincing evidence.

Q. Credibility of Witnesses

In determining where the preponderance or superior weight of evidence on the issues involved lies the court may consider all the facts and circumstances of the case, the witnesses manner of testifying, their intelligence their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses though the preponderance is not necessarily with the greatest number.⁵²

The testimony of a single witness may be sufficient to convict if it appears to be trustworthy and reliable, especially so when it is corroborated by the nature and position of the wounds.⁵³

In *People v. Macatangay*,⁵⁴ Cirilo Sakdalan, one of the four witnesses for the prosecution claimed that appellant Macatangay was carrying a lamp in his left hand which lamp presumably helped Sakdalan to recognize him. The court debunked said claim as being inherently improbable. If Macatangay had deliberately sought night time to carry out his design under cover of darkness, he would not have brought a lamp and carried it at shoulder level thus lighting up his own face. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience of mankind can approve as probable under the circumstances.⁵⁵

In *People v. Jardenil*,⁵⁶ a prosecution for frustrated murder, appellant Jardenil claimed to have hit offended party Marco with his (Marco's) own bayonet which he (Jardenil) found on a table inside the store. If, as Jardenil claimed, Marco and one Filiu were looking for him to attack him complainant would

⁴⁸ G.R. No. L-13085, Aug. 31, 1960.

⁴⁹ 20 American Jurisprudence 131, 134.

⁵⁰ *Ibid*

⁵¹ G.R. No. L-15167.

⁵² Rules of Court, Rule 123, sec. 94.

⁵³ *People v. Templeonuevo*, G.R. No. L-12280, January 30, 1960.

⁵⁴ G.R. No. L-12942, February 29, 1960.

⁵⁵ 3, MORAN, *Comments on the Rules of Court*, p. 574.

⁵⁶ G.R. Nos. L-11795-96, May 20, 1960.

not have left his alleged bayonet beyond his reach, much less where his alleged intended victim could get it and then turn it against its owner. Defendant's claim was considered inherently improbable.

In *People v. Castro*⁵⁷ the defendants contended that the deceased victim whose hands were then admittedly tied behind his back, jumped into the river when it appeared that the raft could not be controlled due to the swift current in midstream. He died of drowning.

Held: No man would have voluntarily jumped into a swollen river with hands tied beneath one's back. It would be suicide; and the most ignorant man knows it. The defendants were convicted of murder.

In *People v. Duldulao*,⁵⁸ accused Macario Duldulao was convicted of robbery with homicide and multiple frustrated homicide on the basis of his own extrajudicial admission of complicity in the crime which admission he reiterated and ratified on the witness stand. The trial court believed said affidavit with regards to his participation in the crime but discredited that portion referring to Sanchez as his companion in the commission of the offense. Defendant questioned this.

Held: The rule is settled that courts are not bound to accept or reject the whole of the testimony of a witness. They may believe one part and disbelieve the other part of his testimony.

*People v. Taño*⁵⁹ holds that conviction of the crime of rape can be based on the sole testimony of complainant.

R. Alibi

The defense of alibi is the weakest that can be put up by an accused because of the easiness with which it can be concocted,—it must be supported by strong evidence to be of some avail though the rule is always to discredit it if there is direct and positive evidence establishing the identity of the accused.⁶⁰

In *People v. Casumpang*⁶¹ the house where appellant claimed to have stayed the night in question was only about 7 kilometers from the scene of the arson and the 2 places were easily accessible by modern means of transportation. It was therefore neither impossible nor improbable for appellant to have been at the scene of the crime in the night aforementioned.

S. Proof Beyond Reasonable Doubt

In a criminal case, the defendant is entitled to an acquittal unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error produces absolute certainty. Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind.⁶²

⁵⁷ G.R. No. L-12789, May 30, 1960.

⁵⁸ G.R. No. L1335, November 29, 1960.

⁵⁹ G.R. No. L-11991, Oct. 31, 1960.

⁶⁰ *People v. Estacio*, G.R. No. L-11430, January 30, 1960; *People v. Bulan*, G.R. No. L-14934, July 25, 1960; *People v. Corpuz*, G.R. No. L-14934, July 25, 1960; *People v. Zapanta*, G.R. No. L-11074, February 27, 1960; *People v. Volpani*, G.R. No. L-13972, April 29, 1960; *People v. Aquidado*, G.R. No. L-12916, May 30, 1960; *People v. Acanto*, G.R. No. L-14363, Oct. 31, 1960.

⁶¹ G.R. Nos. L-14973-74, October 26, 1960.

⁶² Rules of Court, Rule 123, sec. 95.

In *People v. Delmas*⁶³ the several accused Ernesto Luis, Miguel Paeti and Kinio Tibong made affidavits admitting that after killing Hilario Holman and stealing his money they set the house afire without however mentioning Delmas participation in the commission thereof despite the fact that the latter had assisted in their apprehension. On November 15, 1956, the several accused made additional statements to the effect that they committed the crimes at the behest of appellant Delmas who promised them a reward but failed to pay them. But they also testified that on November 11, they met appellant who informed them that the money intended for he reward was burned in he house. In other words, they made their first affidavit when they already knew that appellant Delmas would not give them any money hence their failure to implicate him in their affidavits cannot be due to the fact that appellant did not pay them the price agreed upon. Appellant's guilt not having been proved beyond reasonable doubt, he was acquitted.

T. Corpus Delicti

An extra-judicial confession made by an accused shall not be a sufficient ground for conviction unless corroborated by evidence of corpus delicti.⁶⁴

A mere naked confession uncorroborated by any circumstance inspiring belief in the truth of the confession is not sufficient to warrant the conviction of the accused for the crime of which he is charged.⁶⁵

In homicide, the fact of death is the corpus delicti.⁶⁶ In *People v. Soyang*,⁶⁷ the court considered the efforts exerted by the authorities to locate the missing body for 3 days which proved fruitless more than enough to prove that the victim had indeed died when he was shot by the accused and disappeared in the sea.

⁶³ G.R. Nos. L-13108, November 29, 1960.

⁶⁴ Rules of Court, Rule 123, sec. 96.

⁶⁵ *People v. Macatangay*, G.R. No. L-12942, February 29, 1960.

⁶⁶ *People v. Nollal*, G.R. No. L-14624, July 26, 1960.

⁶⁷ G.R. Nos. L-13983-85, December 31, 1960.